



Appeal Decision

Site visit made on 25 August 2022

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16/11/2022

Appeal Ref: APP/D5120/W/22/3292711

1A Pickford Road, Bexleyheath DA7 4AT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a Class MA, Part 3, Schedule 2, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
 - The appeal is made by The Investment Collaboration (Bexleyheath) Ltd against the decision of the Council of the London Borough of Bexley.
 - The application Ref 21/03404/PRIOR, dated 6 November 2021, was refused by notice dated 31 December 2021.
 - The development proposed is Notification for Prior Approval for the change of use of the first-floor office (Eg(i)) to residential (C3) for 8 no. units (Revised proposal to application 20/00689/PRIOR).
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appellant has submitted a Daylight and Sunlight Report¹ (DASR) which refers to the Building Research Establishment publication 'Site Layout and Planning for Daylight and sunlight, a guide to good practice' second edition published in 2011 (the BRE Guide). However, the BRE Guide 2011 has been superseded by a 2022 edition which has significantly altered the assessment of daylight and sunlight within new developments. Both the appellant and the Council have had the opportunity to respond on this matter, and I have had regard to the comments raised.

Background and Main Issues

3. In its reason for refusal, the Council contends that it has not been demonstrated that the appeal site, consisting of the first floor of a building, is within Class Eg(i) of the Use Classes Order (UCO) or that it is a separate planning unit from the ground floor use as motorcycle sales and MOT garage. On that basis, the Council considers that the proposal does not meet the provisions of Class MA, Part 3, Schedule 2 of the GPDO which relates to the change of use from Class E uses only
4. Paragraph MA.2.(2) of the GPDO also requires that where any development under Class MA is proposed, development is permitted subject to the condition

¹ Daylight and Sunlight Report, Right of Light Consulting, 5 October 2021

that before beginning the development, the developer must apply to the local planning authority for the prior approval of the authority as to a number of matters. In its Appeal Statement, the Council refers to concerns in respect of the provision of adequate natural light, transport impacts, and the Nationally Described Space Standard (NDSS).

5. On that basis, the main issues are:

- Whether the proposal would be within Class MA, Part 3, Schedule 2 of the GPDO; and
- If so, whether prior approval should be granted with regard to consideration of adequate natural light, transport impacts, and the NDSS.

Reasons

Whether Class MA

6. The appeal site is within a building which contains a vacant workshop and storage area on the ground floor, with offices on the first floor. The appeal relates only to the proposed change of use of the first floor.
7. The Council submits that the use of the appeal premises does not fall within Class E and that it is not a separate planning unit from the ground floor. On that basis, it contends that the proposal does not meet the provisions of the GPDO with regards to the prior approval process. The Council refers to a search of the Valuation Office Agency's website which describes the use of the site as either a 'workshop' or a 'store'. The Council also refers to an approval from 1986 for fire escapes which shows that the ground floor and first floor of the building were one property.
8. In support of the proposal, the appellant has provided a list of companies which indicate that the upper floor of the building has been solely in use as offices for a significant period. This is supported by tenancy agreements which restrict the use of individual lettings to offices only. The appellant has also provided Sworn Statements from previous occupiers of ground floor units which set out that the upper floor of the building has been utilised as office space since as early as 2003. This reflects my observations on my visit, where the layout and arrangement of the upper floor of the building were representative of office use. The evidence therefore suggests that the first floor of the building has been solely used as offices, and in that respect would fall within Class E of the UCO.
9. The appellant also states that the businesses on the ground floor operate as separate entities to the upper floors, albeit they have used the toilets on the odd occasion when their own have been unavailable.
10. However, the Sworn Statements specify that "...this unit does not benefit from any toilets and requires the use of the toilets on the upper floors of the building". This is also indicated by the plan attached to each Statement which shows no toilet facilities on the ground floor, notwithstanding the Existing Ground Floor Plan submitted with the application which depicts a toilet serving the ground floor.
11. That said, the submitted plans show that the ground floor commercial units have no internal access to the upper floor, and that the upper floor offices have

a separate entrance and exit to the ground floor units. This reflects my observations on my visit, where I had to exit the building to gain access between floors. Therefore, based upon what I have seen and read, there is no physical connection between the first and ground floors of the building, and the first floor has no functional relationship with the ground floor uses. The shared use of toilet facilities does not, as a matter of fact and degree, change the separate nature of the ground and first floor uses.

12. Based on the evidence before me, and strictly for the purposes of this appeal, I find that the first floor is a separate planning unit, including in relation to uses on the ground floor. I therefore conclude that the appeal site falls within Class E of the UCO, and that the proposal would be within Class MA, Part 3, Schedule 2, of the GPDO.
13. My consideration of this issue relates solely to the remit of the application for prior approval. I am not making any determination in law as to what planning unit(s) do or do not exist in the building. The appellant can apply for an Lawful Development Certificate if they wish to ascertain the existing or proposed lawful use.

Adequate Natural Light

14. Paragraph W(3)(b) of Part 3 of the GPDO sets out that an application for prior approval may be refused where insufficient information has been provided to establish whether the proposed development complies with any conditions, limitations or restrictions which are applicable to the proposed development. Amongst other things, this includes condition MA.2(2)(f) relating to the provision of adequate natural light in all habitable rooms of the dwellinghouses.
15. The appeal site has a tight-knit relationship with surrounding buildings which may affect the light reaching windows serving habitable rooms, and on that basis I consider that it is appropriate to require supporting evidence on this issue. The appellant has provided the DASR which concludes that the proposal will provide future occupiers with adequate levels of natural light.
16. However, the DASR is based on the 2011 edition of the BRE Guide, which as explained previously has been superseded by a 2022 edition. The BRE Guide 2022 is a comprehensive revision, and has significantly altered the assessment of daylight and sunlight within new developments. This includes the Average Daylight Factor which is no longer recommended, but which is part of the assessment in the appellant's DASR. An amended DASR or similar has not been provided which addresses the BRE Guide 2022.
17. The appellant sets out that the GPDO does not provide a definition of the threshold at which the provision of adequate natural light has occurred, and that the BRE Guide is not referred to in the GPDO. However, the BRE Guide is widely recognised as the principal guidance when considering daylight, sunlight and overshadowing and is therefore an appropriate document to use when considering these issues.
18. The GPDO refers to 'adequate natural light' rather than specifically daylight and sunlight, and the appellant contends that the considerations of the GPDO therefore don't directly accord with the BRE Guide. However, to my mind the consideration of natural light encompasses both daylight and sunlight.

19. Furthermore, paragraph W(10)(b) of the GPDO requires that I have regard to the National Planning Policy Framework (the Framework) as if the application were a planning application. Paragraph 125(c) of the Framework encourages the efficient use of land, and states that in respect of housing a flexible approach should be taken in applying policies or guidance relating to daylight and sunlight. As the Framework refers specifically to daylight and sunlight, it is appropriate to consider these matters as part of my assessment of natural light.
20. My attention is drawn to previous decisions where evidence based on the BRE Guide 2011 was considered to demonstrate that development would provide adequate natural light. The appellant submits that the historical use of the BRE Guide 2011 shows that this is appropriate under the GPDO, and that the publication of the 2022 edition does not change this. However, it would not be reasonable to continue to use a threshold based on guidance which has been superseded, and which uses an assessment method (Average Daylight Factor) which is no longer recommended. On that basis, it is the BRE Guide 2022 which represents a suitable method for assessing this issue, rather than previous editions.
21. The Planning Practice Guidance sets out that the prior approval process is light touch with requirements that are much less prescriptive than a planning application. Paragraph 125(c) of the Framework also encourages a flexible approach when applying guidance relating to daylight and sunlight. However, the DASR does not reflect the most up to date guidance on this main issue. On that basis, the evidence submitted by the appellant does not provide sufficient information for me to reach a balanced conclusion on whether the proposals would provide adequate natural light.
22. I conclude that insufficient information has been provided to establish whether the proposed development would provide adequate natural light in all habitable rooms of the dwellinghouses. The proposal would therefore not accord with condition MA.2(2)(f) of Schedule 2, Part 3, Class MA of the GPDO. It has also not been demonstrated that the proposal would comply with the Framework in respect of the consideration of amenity and living standards.

Transport Impacts

23. The Council's concerns on this matter relate to the lack of cycle storage and provision for bin collection. However, the appeal site includes an open forecourt adjacent to the highway which could be used to provide cycle and bin storage. Subject to a condition requiring the submission of these details, I do not consider that this issue would represent a reason to withhold consent.

Space Standards

24. Flats 2 and 8 are indicated as being studio flats which would achieve the NDSS for a single person dwelling. However, the Council states that the submitted plans show double beds in both of these flats, and that they would not comply with the relevant standards for bedroom or gross internal area for occupancy by 2 persons. But, as this is a minor matter of detail, the submission of amended plans demonstrating compliance with the NDSS in respect of a single person dwelling could be secured by condition.

Conclusion

25. I have concluded that the proposal would fall within the provisions of Class MA, Part 3, Schedule 2 of the GPDO. However, notwithstanding my conclusions on transport impacts and space standards, it has not been demonstrated that the proposed development would provide adequate natural light in all habitable rooms of the dwellinghouses. The proposal would therefore conflict with the Framework as a whole in respect of the consideration of amenity and living standards.

26. For the reasons given above, I conclude that the appeal should be dismissed.

David Cross

INSPECTOR